IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3713 OF 1999

Girish Tokershi Gala ...Applicant

Versus

M/s.Vikram Processors & Ors. ...Respondents

Shri Sunil Gonsalves i/by Shri A.P.Gupte for the Applicant.
Shri S.V.More, A.P.P for the State.

CORAM : A. S. OKA, J.
DATE : DECEMBER 15, 2006.

P.C.:

1. Heard the Advocate for the Applicant. The Applicant is the complainant in a complaint filed under Negotiable Instruments Act, 1881. The complainant resulted in acquittal of the Respondents.

2. I have heard the learned Advocate for the Applicant. He submitted that the second to fourth Respondents were partners of the first Respondent and they were duly served with the notice under section 138(b) of the Negotiable Instruments Act, 1881. He submitted that service of notice on partners of the first Respondent is sufficient compliance with requirement of law.

3. I have considered the submissions. So far as the second to fourth Respondents are concerned, I find

that there were no averments made in the complaint inviting applicability of section 141 of the said Act of 1881. In view of the decision of the Apex Court in the case of **(2005) 8 Supreme Court Cases 89 S.M.S.Pharmaceuticals Limited Vs. Neeta Bhalla and Another** the complaint was not entertained as against the second to fourth Respondents.

4. There is a finding of fact recorded based on documentary evidence that notice as contemplated by section 138(b) was not served to the first Respondent. Elaborate discussion has been made by the Trial Court by recording that only on the back side of a copy of the notice an endorsement was made subsequently. However, it is found that as a matter of fact, the notice was not served to the first Respondent. The first Respondent is the drawer of the cheque. The liability of the second to fourth Respondents arises only by virtue of section 141 of the said Act. The service of notice under section 138(b) to the drawer of the cheque is a mandatory requirement of law.

5. The view taken by the learned Trial Judge is a possible view. No case is made out for interference. Application for leave is rejected.

JUDGE